



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Forest Grove  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** LAT, MNDCT, LRE, OLC

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70.

The tenant attended the hearing with her advocate LH, as well as BV for the landlord. The hearing commenced at 9:30 a.m., and although scheduled to end at 10:30 a.m., additional time was provided in order to provide a fair opportunity for both parties to give sworn testimony, make submissions, call witnesses, and cross examine each other. The hearing ended at 10:37 a.m.

The landlord acknowledged receipt of all hearing documents, and were ready to proceed with this matter. The landlord did not submit any written evidence for this hearing.

### **Preliminary Issue: Adjournment of Hearing**

At 10:30 a.m., the tenant requested an adjournment of the hearing as she felt she needed additional time to make further submissions, submit additional evidence, call witnesses, and conduct cross examination.

The landlord opposed the application as he felt that both parties had ample time to prepare for the hearing, and make submissions.

I note that at the beginning of the hearing both parties were clearly informed of the RTB Rules of Procedure about behaviour during the hearing, including Rule 6.10 as set out below:

**6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing**

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

I also confirmed with both parties whether they would be calling witnesses, and reminded both parties to keep their testimony relevant to the tenant's application as I wanted to provide both parties a fair opportunity to be heard.

In deciding whether the tenant's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

Although the tenant was assisted by her advocate LV who primarily made submissions on behalf of the tenant, the tenant was given an opportunity to also participate in this hearing. While I am sympathetic to the tenant's situation, I find that the tenant failed to establish how an adjournment was required or necessary. I find that the tenant had ample time to prepare for the hearing, and the tenant and her advocate were given a fair opportunity during the hearing to call witnesses, cross examine the other party and their witnesses, and make submissions. I am not satisfied that the adjournment request was not due to the intentional actions or neglect of the tenant. I also took in

consideration that the tenant's advocate was in attendance at the hearing, and was able to provide substantial support and assistance.

Furthermore, as the landlord was ready to proceed, I find that it would be prejudicial to the landlord in further delaying this matter.

The request for an adjournment was not granted. Both parties were provided additional time beyond the allotted hearing slot to complete their closing statements, and the hearing ended at 10:37 a.m.

### **Issues(s) to be Decided**

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order for the landlord to comply with the *Act*?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental units?

Is the tenant entitled to an order to allow the tenant to change the locks to the rental units?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on May 15, 2019, with monthly rent currently set at \$600.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$300.00, and a pet damage deposit in the amount of \$100.00.

LV provided the following submissions on behalf of the tenant. The tenant did not have any issues during this tenancy until May and June of 2020 after she had made requests of the landlord to pay for the utilities, and provide her with a parking spot. The tenant had constructed a dog pen outside of her rental unit, which the tenant testified that she had verbal permission to do from one of the managers. The structure was large, and not concealed from the landlord, and the tenant had never received any written complaints about the dog pen, nor the "bylaw infraction" for the year that the pen was situated in that area. LV testified that the tenant did not have a copy of the bylaws, nor was she ever presented with any official violation notices. LV testified that the dog pen was

essential to the tenant's daily living as she requires assistance from workers who attend her rental unit, and the dog pen is used when these workers attend. The tenant testified that the landlord had taken down the dog pen without her permission, and she is seeking compensation in the amount of \$600.00 for the dog pen. The tenant submitted an advertisement to support the value of the replacement as well as the labour to construct it. The tenant is seeking a further \$400.00 in compensation for her loss of quiet enjoyment.

LV testified that the landlord had sent the tenant several harassing emails threatening to remove the dog pen, as well as evict the tenant. The tenant has been issued a 1 Month Notice to End Tenancy for Cause, which has been disputed, and will be dealt with at a future hearing.

LV testified that the landlord or his agents have entered the tenant's rental unit multiple times without her permission or proper notice. LV testified that due to mobility issues, the tenant would leave the door unlocked, and the landlord had entered her rental unit, including four times on June 24, 2020. The tenant called a witness DM who testified that he had observed the landlord exit another tenant's unit without their permission. DM also testified that the landlord has threatened him. The landlord questioned DM's credibility as the landlord confirmed that DM was charged with uttering threats against the managers.

LV expressed concern about the tenant's safety and well-being, especially in light of the Ministerial Order that prohibited the landlord from entering the tenant's rental unit during the period of the Order. In addition to the monetary orders, the tenant is also requesting an order that she be allowed to change the locks, and an order suspending or setting conditions on the landlord's right to enter her rental unit.

Although the landlord does not dispute that he had taken down the dog pen, the landlord is disputing tenant's entire claim for monetary compensation as well as her claims that he had harassed the tenant or entered her rental unit without proper notice or permission.

The landlord testified that he had taken down the dog pen as the dog pen violated the rules and bylaws. The landlord testified that the dog pen was still stored on the property. The landlord called a witness, RC, who confirmed that the dog pen had been stored in the carport behind a boat. RC testified that the tenants worker had requested that the dog pen be moved to the tenant's storage locker, but RC decided not to touch the dog pen again. RC also testified that she had never entered the tenant's rental unit without

her permission. RC testified that she had once opened the door to relay a message, but did not enter the rental unit.

### **Analysis**

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I have considered the testimony and evidentiary materials submitted by both parties. I accept the undisputed evidence that the landlord did remove the tenant's dog pen. The landlord testified that this dog pen was still located on the property. As the dog pen is still in the landlord's possession, I order that the landlord return the entire dog pen to the tenant within 7 days of receiving this decision. As the landlord is still in possession of the dog pen, I dismiss the tenant's application in the amount of \$600.00 for the dog pen with leave to reapply. If upon inspection the tenant has determined that any damage has been caused to the dog pen by the landlord, or if the landlord fails to comply with this order, the tenant may re-apply for compensation related to the damage or failure of the landlord to comply with this order.

Although I note the landlord's concerns that the dog pen violates the building's rules and bylaws, I find that the landlord has not provided sufficient evidence to support that the tenant was provided with proper written notice to remove the dog pen other than the email communications between the landlord and the tenant. I find that the landlord had unilaterally removed the dog pen without filing an application for dispute resolution or her permission, which has caused the tenant immense hardship as she relies on the dog pen as part of her daily living. I find that the tenant was denied the opportunity to dispute the removal of the dog pen before the landlord had deconstructed her property, and as a result I find that this violated her right to peaceful enjoyment.

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant also testified that the landlord had entered her rental unit without her permission. Despite the testimony of the tenant and her witness, I am not satisfied that the tenant had provided sufficient evidence to support that the landlord or the managers have entered her rental unit without her permission. On this basis I dismiss the tenant's application for an order to change the locks, as well as an order suspending or setting conditions on the landlord's right to access to her rental unit. I note that the landlord is still bound by any applicable legislation that requires proper notice or permission to enter the tenant's rental unit.

The tenant requested \$400.00 in compensation for the landlord's contravention of the Act. Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

*An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.*

In this case, I find that the landlord had removed the dog pen without the tenant's permission, or without filing an application for dispute resolution. I find that the tenant faced extreme distress as a result of the landlord's actions, especially since the dog pen had been place for over a year, and was essential to the tenant's daily living. Accordingly, I find the tenant is entitled to monetary compensation for the landlord's violation.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenant compensation in the amount of \$200.00 for violation of the tenant's right to peaceful enjoyment.

### **Conclusion**

I order that the landlord return the entire dog pen to the tenant within 7 days of receiving this decision. As the landlord is still in possession of the dog pen, I dismiss the tenant's application in the amount of \$600.00 for the dog pen with leave to reapply. If upon inspection the tenant has determined that any damage has been caused to the dog pen by the landlord, or if the landlord fails to comply with this order, the tenant may re-apply for compensation related to the damage or failure of the landlord to comply with this order.

I issue a Monetary Order in the amount of \$200.00 in the tenant's favour. The tenant is provided with this Order in the above terms and the landlord (s) must be served with a copy of this Order as soon as possible. Should the landlord (s) fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 7, 2020

---

Residential Tenancy Branch